

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 9

### **REMARKS**

The application has been amended. Claims 13-20 have been withdrawn from prosecution. Reconsideration is respectfully requested.

#### **Claim Rejections Under 35 U.S.C. § 112**

The Examiner has rejected claims 1-12 under 35 U.S.C. § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has been amended to correct both the spelling error and to clearly define "open upper end". Therefore, this rejection of independent claim 1 and by dependency claims 2-12 is obviated.

#### **Claim Rejections Under 35 U.S.C. § 102(b)**

The Examiner has rejected claims 1-3, 6, 7 and 9 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,403,679 to Stone ("hereinafter "Stone '679").

Stone '679 shows a modular battery assembly having perimetrical structure with three sides and an open top and bottom. Individual compartments are defined within the sides of each module to support the battery. Each of the battery compartment includes a base, upstanding lip extending from the base, end wall and opposing side walls.

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37  
Page 10

Clearly Stone fails to show or describe the stackable member as disclosed in the present invention. Specifically, Stone fails to show or suggest the arrangement of the molded plastic module where the cells are supported on the base, across and between the upstanding wall as recited in amended independent claim 1. The Stone '697 structure, on the other hand, provides individual compartments against the side walls for storage of individual batteries. As discussed above, Stone '679 shows module battery assembly having a perimetrical structure which supports batteries around the perimeter of the structure. Stone '679 fails to provide any base which supports a plurality of batteries thereacross. Whereas, the module of the present invention allows for support and positioning of the cells not only on the base but also across the base as recited in amended independent claim 1. Since Stone '679 fails to disclose each and every element set forth in amended claim 1, Stone '679, as a matter of law, cannot anticipate claim 1.

Moreover, since the base of the Stone patent is not designed to stretch across the perimetrical wall, there is no teaching or suggestion in Stone to support the cells on the base, across and between the upstanding walls. As such, it is respectfully submitted that the claims of the present invention define patentability over Stone.

Claims 2, 3, 6, 7 and 9 depend from independent claim 1 and incorporate by references all the features thereof. Applicant maintains that independent claim 1 is not anticipated by the Stone '679 patent because the reference fails to disclose all of the features of the claims as

Applicant: Drew Heimer  
Application Serial No.: 09/884,362  
Filing Date: June 18, 2001  
Docket No.: 1161-37

Page 11

discussed above. Therefore, Applicant respectfully submits that the dependent claims 2, 3, 6, 7 and 9 are allowable for the same reasons as advanced allowability of claim 1.

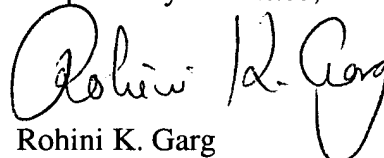
**35 U.S.C. § 103 Rejection of Claims 4, 5, 11 and 12**

The Examiner has rejected claims 4, 5, 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Stone '679 in view of both Lavanture (U.S. Patent No. 6,521,371) and Yellin (U.S. Patent No. 3,655,065). Applicant respectfully traverses the rejection. These references fail to fill the deficiency of Stone. Since claim 1 is patentable over prior art, as discussed above, Applicant submits that the dependent claims 4, 5, 11 and 12 are allowable for the same reasons as advanced allowability of claim 1.

Having responded in full to the present Office Action it is respectfully submitted that the application including claims 1 through 12 is in condition for allowance. Favorable action thereon is respectfully solicited.

Should the Examiner have any questions regarding this amendment, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,



Rohini K. Garg  
Registration No.: 45,272  
Attorney for Applicants

Hoffmann & Baron, LLP  
6900 Jericho Turnpike  
Syosset, NY 11791  
(973) 331-1700